

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT KNOXVILLE

FILED

MAY 29, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

SHIRLEY WILLIAMS,)	MONROE CHANCERY
)	
Plaintiff/Appellant)	NO. 03S01-9607--CH-00084
)	
v.)	HON. EARL H. HENLEY,
)	CHANCELLOR
SWEETWATER HOSPITAL)	
ASSOCIATION,)	
)	
Defendant/Appellee)	

For the Appellant:

John W. Cleveland
Cleveland & Cleveland
120 W. Morris Street
Sweetwater, Tennessee 37874

For the Appellee:

Lynn C. Peterson
Wimberly Lawson Norton & Luhn, PLLC
P. O. Box 2467
Knoxville, Tennessee 37901-2467

MEMORANDUM OPINION

MAILED: MAY 29, 1997

Members of Panel:

E. Riley Anderson, Justice
John K. Byers, Senior Judge
Roger E. Thayer, Special Judge

AFFIRMED

BYERS, Senior Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Plaintiff alleged a work-related aggravation of a pre-existing non-work-related back condition. She alleged that medical expenses and temporary total disability benefits had been paid by the employer but sought permanent partial disability, future medical expenses and discretionary costs.

The trial court found that the temporary aggravation of her back condition had resolved with no permanent impairment and awarded no future benefits.

We affirm the judgment of the trial court.

Plaintiff, a registered nurse, injured her back at home in June, 1992. Dr. David Hauge, orthopedic surgeon, performed lumbar disk surgery at L4-L5 on November 19, 1992 and returned plaintiff to work the following January with lifting restrictions.

Plaintiff alleged that on January 25, 1993, she re-injured her back while lifting a patient at work. Dr. Hauge placed her on temporary total disability for three weeks and treated her conservatively, after which she returned to work again.

Dr. Hauge opined that 20 percent of patients who have disk surgery experience recurrent herniations of the same disk. There are various causes of such recurrences, some related to the surgery itself and some which are due to just normal activity. He could not state within reasonable medical certainty whether or not plaintiff's recurrent herniation was work-related.

Dr. Hauge opined that the original, non-work-related injury resulted in eleven percent permanent partial disability to the body as a whole:

"I would state that the 11% impairment to the body . . . is a result of the injury she sustained in June, 1992 and her subsequent surgery. The percentage impairment this patient has did not change as a result of the January, 1993 incident, although it certainly can be argued that she was much more likely to have an aggravation requiring medical treatment because of the existence of this previous problem."

Our review of the findings of fact made by the trial court is *de novo* upon the

record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. TENN. CODE ANN. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 584 (Tenn. 1991).

The application of this standard requires this Court to weigh in more depth the findings and conclusions of the trial courts in workers' compensation cases.

Corcoran v. Foster Auto GMS, 746 S.W.2d 452, 456 (Tenn. 1988).

Where, as in this case, the medical testimony is presented by deposition, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446 (Tenn. 1994).

We have carefully reviewed the medical evidence, including the deposition and correspondence of Dr. Hauge, and we are persuaded that the preponderance of the evidence supports the trial court's conclusion that the plaintiff sustained a temporary aggravation of a previous non-work-related injury with no increase in permanent partial disability.

We affirm the judgment of the trial court with costs assessed to the appellant.

John K. Byers, Senior Judge

CONCUR:

E. Riley Anderson, Justice

Roger E. Thayer, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

FILED
JULY 11, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

SHIRLEY WILLIAMS.) Monroe Chancery
) No. 11,824
 Plaintiff/Appellant,)
 vs.) Hon. Earl E. Henley
) Chancellor
 SWEETWATER HOSPITAL)
 ASSOCIATION)
)
)
 Defendant/Appellee,) S. Ct. No. 03S01-9607-CH-00084
)

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff/appellant and John W. Cleveland, surety, for which execution may issue if necessary.

07/11/97